

200207269-1

10/664,687

REMARKS

This is a full and timely response to the non-final Official Action mailed May 2, 2005, which imposed an Election of Species. Prompt examination of the elected claims on their merits is respectfully requested in accordance with the election made below.

The outstanding Office Action alleges that there are seven patentably distinct species claimed in the present application. Those species are identified by the Office Action as follows:

Species 1: off-axis, Fig. 5

Species 2: on-axis, Fig. 7

Species 3: fitment with first fluid interconnect

Species 4: fitment with second fluid interconnect

Species 5: fitment with bubble generator

Species 6: system with means for notifying a user of a sudden change in negative pressure

Species 7: Fig. 2 (first and second pair of opposing side portions).

In response, Applicant elects Species 7 for immediate examination.

This election is with traverse. MPEP Section 806.04(f) states the following:

Claims to be restricted to different species must be mutually exclusive. The general test as to when claims are restricted, respectively, to different species is the fact that one claim recites limitations which under the disclosure are found in a first species but not in a second, while a second claim recites limitations disclosed only for the second species and not the first. This is frequently expressed by saying that claims to be restricted to different species must recite the mutually exclusive characteristics of such species.
(emphasis added)

The various features indicated in the Office Action as defining the various "species" may well each independently represent patentably distinct subject matter. However, the

200207269-1

10/664,687

indicated features are not mutually exclusive, with the exception of species 1 and 2, which are. Thus, species 3-7 do not meet the definition of restrictable species give by § 806.04(f) of the MPEP. For at least this reason, the species election should only have been between species 1 and 2, with the claims of all other "species" remaining for present examination. Reconsideration of the current election requirement in accordance with MPEP § 806.04(f) is respectfully requested.

Because the characteristics of the alleged "species" are not mutually exclusive, it becomes very difficult to determine what claims read on which "species." Some claims clearly read on multiple species. Thus, as best Applicant can determine, the claims associated with each presently-indicated "species" are as follows:

Species 1: claims 11, 24, 44 and 55

Species 2: claims 12, 13, 25 45 and 56

Species 3: claims 9-13, 18-26 and 35-46

Species 4: claims 22, 23, 43 and 54

Species 5: claims 14-16, 27-29, 36, 47-57 and 60

Species 6: claim 66

Species 7: claims 17 and 30-46

All other claims are not specific to any of the indicated species and are, consequently, generic to all. Specifically, claims 1-8, 58, 59, 61-65, 67 and 68 are generic to all the indicated species.

200207269-1

10/664,687

Therefore, claims 1-8, 17, 30-46, 58, 59, 61-65, 67 and 68 are the elected claims presented for immediate examination. Claims 9-16, 18-29, 47-57, 60 and 66 are labeled as "withdrawn" above.

The withdrawn claims are withdrawn without prejudice or disclaimer. Applicant reserves the right to file any number of continuation or divisional applications to the withdrawn claims or to any other subject matter described in the present application. Applicant further understands that if any of the generic claims is found to be allowable, any withdrawn claim that depend from the allowable generic claim with immediately receive examination in the present application.


200207269-1

10/664,687

If the Examiner has any comments or suggestions which could place this application in even better form, the Examiner is requested to telephone the undersigned attorney at the number listed below.

Respectfully submitted,

DATE: 27 May 2005


Steven L. Nichols
Registration No. 40,326

Steven L. Nichols, Esq.
Managing Partner, Utah Office
Rader Fishman & Grauer PLLC
River Park Corporate Center One
10653 S. River Front Parkway, Suite 150
South Jordan, Utah 84095

(801) 572-8066
(801) 572-7666 (fax)

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being transmitted to the Patent and Trademark Office facsimile number 703-872-9306 on May 27, 2005. Number of Pages: 17


Rebecca R. Schow